

These are the tentative rulings for civil law and motion matters set for Tuesday, September 30, 2014, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, September 29, 2014. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0061237 Vogelsang USA, Inc. vs. Heron Innovators, Inc.

The Demurrer to Answer is continued to October 21, 2014 at 8:30 a.m. in Department 32 to be heard by the Honorable Mark S. Curry.

2. M-CV-0061987 Swol, Robert P. vs. Ottis, Jayson, et al

Appearance required on September 30, 2014 at 8:30 a.m. in Department 40.

3. M-CV-0062038 Arroyo, Alma R. Garnica vs. Dunlap, Sheila

Appearance required on September 30, 2014 at 8:30 a.m. in Department 40. Defendant is advised that the notice of motion must include notice of the court's tentative ruling procedures. Local Rule 20.2.3(C).

Defendant's Motion to Quash Service of Summons and to Set Aside Default Judgment; and, in the Alternative, to Set Aside and Vacate Default and Default Judgment Under CCP § 473 is denied.

Filing a proof of service that complies with statutory standards creates a rebuttable presumption that service was proper. *Floveyor Int'l, Ltd. v. Superior Court* (1997) 59 Cal.App.4th 789, 795. Defendant asserts that she was never served with the 3-day notice or summons and complaint in this action, but fails to rebut the presumption of service, which is reinforced by declarations from Ryan Brinkman and Bret Turner, attesting to personal service.

Defendant's alternative request to set aside the default under Code of Civil Procedure section 473(b) on the grounds of mistake, inadvertence, or excusable neglect, is denied. Defendant's declaration sets forth no facts to establish that her default was taken as a result of her mistake, inadvertence, or excusable neglect.

4. S-CV-0024220 J.D. Pasquetti, Inc. vs. Old Auburn 2005, L.P. et al

This tentative ruling is issued by the Honorable Mark S. Curry. If oral argument is requested, it shall be heard on September 30, 2014 at 8:30 a.m. in Department 32.

Developers Surety and Indemnity Company's ("Developers") Motion for Attorneys Fees is granted in part. Developers' request to strike the opposition filed by defendant Greg Vincent is denied. Despite the extreme tardiness of the opposition, Developers was able to respond substantively to the arguments made therein, and does not appear to have been prejudiced.

As the prevailing party in this action, Developers requests attorneys' fees totaling \$107,061.25, pursuant to contract. Fee setting typically begins with the "lodestar" – i.e., a touchstone figure based on the number of hours reasonably expended multiplied by the reasonable hourly rate. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1097. The court finds counsel's hourly rate, capped at \$250, to be reasonable based on the reasonable hourly rate prevailing in the community for similar services. Having carefully reviewed the declaration and billings submitted by counsel, and the entire file in this action, the court also finds that the number of hours expended by counsel were reasonably spent on the litigation. While defendant Greg Vincent argues that Developers should not be awarded fees incurred relating to its motion for summary judgment, which was granted, and the subsequent appeal of the judgment, compensation is appropriate for all fees reasonably incurred, despite the fact that the prevailing party was unsuccessful with respect to certain aspects or courses of action undertaken in the litigation. *See Folsom v. Butte County Ass'n of Governments* (1982) 32 Cal.3d 668, 685-686. This case was filed in January 2009, and involved potentially complex contract, bond, and duty issues, as well as issues regarding purported lien releases and accounting. A motion for summary judgment was filed, and granted, but the judgment was subsequently overturned by the Court of Appeal. There were also multiple trial calls where trial did not go forward due to no fault of the parties. Under the circumstances, the hours expended by counsel were reasonable.

Developers is awarded attorneys' fees of \$107,061.25 from cross-defendants Old Auburn 2005, L.P., Greg Vincent, and Dawn Vincent-Tarantino.

Developers also requests expenses totaling \$38,956.47, including expert fees of \$30,333.75, costs permissible under Code of Civil Procedure section 1033.5 of \$6,486.86, and costs that are impermissible, or not expressly authorized, under Code of Civil Procedure section 1033.5 of \$2,135.86. Developers claim entitlement to all expenses based on provisions of the indemnity agreement that was sued on, providing for recovery of "expenses and reasonable attorneys' fees" as well as indemnification for "costs, damages, attorney's fees and expenses of whatever kind or nature". Developers contends that the broad contractual language entitles it to recover expert witness fees and costs which are generally not permitted by statute.

As noted by Developers, there is a split of authority regarding whether costs such as expert witness fees, not permitted under Code of Civil Procedure section 1033.5, could be recoverable based on contractual language. In *Bussey v. Affleck* (1990) 225 Cal.App.3d 1162, the appellate court held that fees of experts could be awarded under a contractual provision providing for an award of “all costs and expenses”. However, in *Ripley v. Pappadopoulos* (1994) 23 Cal.App.4th 1616, a case out of the 3d District Court of Appeal, the court declined to follow the holding in *Bussey*, and held that expert witness fees and other litigation expenses not allowed by statute were not recoverable as costs. The court concluded, “[t]he Legislature has reserved to itself the power to determine selectively the types of actions and circumstances in which expert witness fees should be recoverable as costs and such fees may not otherwise be recovered in a cost award.” *Id.* at 1625. While assuming that expert witness fees might be recoverable under a contractual provision, the court held that “they must be specially pleaded and proven at trial rather than included in a memorandum of costs.” *Id.* at 1627; *see also Arntz Contracting Co. v. St. Paul Fire & Marine Ins. Co.* (1996) 47 Cal.App.4th 464, 490-491 (expert witness fees available under contractual attorney fee provision so long as they were specially pleaded and proven).

The court finds the reasoning of *Ripley* to be persuasive, and declines to award expert witness fees in the amount of \$30,333.75.

The rationale of *Ripley* applies equally to other litigation costs that are not permitted by Code of Civil Procedure section 1033.5. *Ripley, supra*, 23 Cal.App.4th at 1625-1627; *Hsu v. Semiconductor Systems, Inc.* (2005) 126 Cal.App.4th 1330, 1341-1342. The contractual provision must be interpreted in light of the statute’s limited definition of costs. *Id.*; *Arntz Contracting Co., supra*, 47 Cal.App.4th at 491. Postage and photocopying charges are expressly not allowable as costs pursuant to Code of Civil Procedure section 1033.5(b)(3). The court strikes delivery costs of \$348.97, postage costs of \$185.67, and copy costs of \$957.57. All other costs requested by Developers are granted, in the total amount of \$7,130.51.

Developers is awarded attorneys’ fees in the total amount of \$107,061.25 and costs in the amount of \$7,130.51 from cross-defendants Old Auburn 2005, L.P., Greg Vincent, and Dawn Vincent-Tarantino.

To the extent defendant Greg Vincent has set forth arguments regarding prejudgment interest, the court declines to consider such arguments, which are not properly before the court on Developers’ motion for attorneys’ fees.

5. S-CV-0026470 Loomis Land, Inc. vs. Stoneridge Realty Inc., et al

The court first notes that this matter was most recently continued to be heard by the Honorable Mark S. Curry in Department 32. However, as the motion seeks attorneys’ fees based on motions for summary adjudication heard by Commissioner Michael A. Jacques, this tentative ruling is issued by Commissioner Jacques. If oral argument is requested, it shall be heard on September 30, 2014 at 8:30 a.m. in Department 40.

Plaintiff and cross-defendants’ Motion for Attorney’s Fees and Costs is granted in part.

Plaintiff and cross-defendant Loomis Land, Inc. and cross-defendant Marioara Bucurenciu seek an award of attorneys' fees and costs from defendants and cross-complainants California Investment Group, LLC ("CIG") and Robert Amick ("Amick"), as the prevailing parties on motions for summary adjudication.

As a preliminary matter, moving parties fail to establish a basis to obtain contractual attorneys' fees from Amick. Moving parties reference an attorneys' fees provision in a deed of trust executed by Loomis Land, Inc., but do not argue that Amick was a party to this deed of trust, nor do they set forth any argument regarding how Amick would be liable for fees. Accordingly, the request for attorneys' fees is denied as to Amick.

With respect to CIG, moving parties prevailed on a motion for summary adjudication as to two causes of action in the complaint, and a separate motion for summary adjudication as to the cross-complaint. After the filing of this motion, the parties entered into a stipulated judgment as to all claims between them. Moving parties request attorneys' fees totaling \$156,647.54, plus additional fees incurred with respect to this motion, and costs totaling \$26,812.55. No opposition to the motion has been filed.

Fee setting typically begins with the "lodestar" – i.e., a touchstone figure based on the number of hours reasonably expended multiplied by the reasonable hourly rate. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1097. The court finds counsel's hourly rate, capped at \$350, to be reasonable based on the reasonable hourly rate prevailing in the community for similar services. Having carefully reviewed the declaration and billings submitted by counsel, and the entire file in this action, the court also finds that the number of hours expended by counsel were reasonably spent on the litigation. Moving parties are awarded attorneys' fees in the total amount of \$159,492.54 from CIG.

Moving parties also request costs in the amount of \$26,812.55. Of this amount, \$23,447.76 were set forth in a separately filed memorandum of costs. To obtain a cost award, the prevailing party is required to serve a memorandum of costs. Cal. R. Ct., rule 3.1700(a)(1). With respect to costs sought which were not set forth in the memorandum of costs, such costs will not be granted. As to the costs set forth in the memorandum of costs, failure to challenge a costs bill waives any objection thereto. *Douglas v. Willis* (1994) 27 Cal.App.4th 287, 290. Accordingly, moving parties are awarded costs in the amount of \$23,447.76 from CIG and Amick.

6. S-CV-0026760 Yanez, Michael vs. Union Pacific Railroad Co., et al

This tentative ruling is issued by the Honorable Garen J. Horst. If oral argument is requested, such argument shall be heard on Wednesday, October 1, 2014 at 8:30 a.m. in Department 41:

The tentative ruling on Defendant Union Pacific Railroad's Demurrer to the Second Amended Complaint will be faxed to the parties before 12:00 p.m. on September 30, 2014.

7. S-CV-0028737 Hopkins, Toni Lee vs. Cayton-Sutherland, Robin D., et al

As a preliminary matter, the court notes that plaintiff's notice of motion contains an incorrect hearing date (setting the motion for September 30, 2017), the memorandum of points and authorities states an incorrect time for the hearing, and counsel's declaration also states an incorrect time, as well as a different incorrect hearing date (September 30, 2012). However, the court will excuse these defects as defendants' opposition sets forth accurate information regarding the date, time and department for the hearing on plaintiff's motion.

Plaintiff's Motion for Leave to File Fourth Amended Complaint is denied.

Plaintiff's motion fails to comply with California Rules of Court, rule 3.1324(b), which requires a declaration that specifies when the facts giving rise to the proposed amendment were discovered, and the reasons why the request for amendment was not made earlier. In this case, plaintiff asserts that leave to amend to assert a new cause of action for intentional infliction of emotional distress is necessary because defendant has taken the position that she was not plaintiff's employer. In fact, this has been defendant's position from the outset.

Plaintiff demonstrates an unreasonable lack of diligence in moving for leave to amend her complaint. Plaintiff's complaint was filed on August 4, 2011. She subsequently filed a first amended complaint on August 30, 2011, a second amended complaint on February 22, 2012, and a third amended complaint on December 21, 2012. Trial is currently scheduled to commence on October 6, 2014. Trial dates have been set and continued multiple times in this case, including on January 21, 2014 and March 10, 2014 due to unavailability of courtrooms, and most recently on August 25, 2014, after which this motion was filed. Plaintiff offers no explanation for the extreme delay in seeking leave to amend. *See Magpali v. Farmers Group, Inc.* (1996) 47 Cal.App.4th 471, 486. Defendants demonstrate prejudice in that permitting the amendment would deprive defendants of the ability to adequately respond and conduct discovery regarding a new intentional tort claim, in a case that to this point has involved only employment claims. Further, permitting amendment would alter defendants' potential liability in connection with plaintiff's claims, on the eve of trial. A party has a right to know the risks and weigh his or her exposure prior to trial. *See Hulsey v. Koehler* (1990) 218 Cal.App.3d 1150, 1159.

The court has not considered plaintiff's reply brief, which was not timely filed or served.

8. S-CV-0029671 Colby, Diane vs. Poidmore, Anthony et al

The Motion to Set Aside Verdict is continued to October 24, 2014 at 1:30 p.m. in Department 3, to be heard by the Honorable J. Richard Couzens. A tentative ruling on this motion shall be posted on October 22, 2014.

9. S-CV-0030291 Hay, Brenda vs. El Dorado County Office Education, et al

Defendants' Motion for Attorneys' Fees

Defendants Russell DeWalt, Russ Colletta and Jeremy Meyers move for an award of attorneys fees and costs against plaintiff pursuant to Code of Civil Procedure section 1038.

Defendants' objections to the Declaration of James Ashworth are overruled. Plaintiff's request to strike defendants' reply brief is denied. Plaintiff's contention that the reply was required to be served five court days, plus five calendar days, prior to the hearing on the motion, is plainly incorrect. Plaintiff appears to be confusing statutory notice requirements with the requirements regarding service and filing of motion opposition and reply papers.

Plaintiff alleged causes of action against moving defendants for harassment and defamation. Moving defendants are prevailing parties in this action, as the court granted motions for summary judgment in favor of each of them. Russell DeWalt requests fees in the amount of \$45,854.59. Russ Colletta requests fees in the amount of \$43,563.73. Jeremy Meyers requests fees in the amount of \$43,289.49. Moving defendants also request costs pursuant to memoranda of costs which have been separately filed. Defendants' requests for costs will be addressed separately by the court's ruling on plaintiff's Motion to Tax Costs.

Code of Civil Procedure section 1038 states:

(a) In any civil proceeding under the Government Claims Act ... or for express or implied indemnity or for contribution in any civil action, the court ... shall, at the time of the granting of any summary judgment ... determine whether or not the plaintiff ... brought the proceeding with reasonable cause and in the good faith belief that there was a justifiable controversy under the facts and law which warranted the filing of the complaint, petition, cross-complaint, or complaint in intervention. If the court should determine that the proceeding was not brought in good faith and with reasonable cause, an additional issue shall be decided as to the defense costs reasonably and necessarily incurred by the party or parties opposing the proceeding, and the court shall render judgment in favor of that party in the amount of all reasonable and necessary defense costs ...

...

(c) This section shall be applicable only on a motion made prior to the discharge of the jury or entry of judgment ...

As the statutory language makes clear, a motion for fees pursuant to Code of Civil Procedure section 1038 must be made prior to entry of judgment. In this case, the court entered judgment against each of the named defendants on April 9, 2014. Defendants' filed notice of entry of the judgments on June 10, 2014. The motion for attorneys' fees was not filed until July 21, 2014.

Based on the foregoing, defendants' Motion for Attorneys' Fees is denied.

Motion to Tax Costs

Plaintiff moves to tax costs requested by defendants Russell DeWalt, Russ Colletta and Jeremy Meyers, pursuant to duly filed memoranda of costs following entry of judgment in this matter.

When fewer than all of multiple, jointly represented defendants presenting a unified defense prevail, the court may exercise its discretion in awarding costs, including apportioning costs, in light of the necessity of the costs, fairness to the parties, and whether the parties achieved their principal litigation objectives. *Wakefield v. Bohlin* (2006) 145 Cal.App.4th 963, 984-987. The subject defendants seek costs in amounts that have already been apportioned among five defendants. Although plaintiff argues that there are six named defendants, the court agrees that for all intents and purposes, El Dorado County Office of Education and Vicki Barber, El Dorado County Superintendent, are one and the same.

In the operative complaint in this action, plaintiff alleged that the defendants worked in concert to harass and defame her, leading to her emotional distress and eventual miscarriage. The court disagrees with plaintiff's assertion that costs for necessary depositions and service of process were incurred only by other defendants in the action, and did not benefit moving parties. In opposition to plaintiff's motion, defendants provide sufficient evidence to support the reasonableness and necessity of each of the claimed costs. Further, moving defendants clearly achieved their principal litigation objectives, and fairness dictates that as the prevailing parties, they be awarded costs.

Plaintiff's Motion to Tax Costs is denied. Russell DeWalt shall be awarded costs in the amount of \$7,676.89. Russ Colletta shall be awarded costs in the amount of \$7,676.89. Jeremy Meyers shall be awarded costs in the amount of \$7,676.89.

10. S-CV-0032381 Bowles, John vs. DFI Funding, Inc., et al

The Motion to Set Aside and Motion for Leave to Amend are dropped. No moving papers were filed.

11. S-CV-0032896 Clark, Amy, et al vs. Fry, Tyler David, et al

Plaintiffs' unopposed Motion for Sanctions is granted in part.

The court previously granted plaintiffs' motion to compel, ordering defendant Augustine Deguzman ("Deguzman") to respond to written discovery by August 29, 2014, to appear for his deposition as noticed by plaintiffs, and to pay sanctions in the amount of \$652.25. Deguzman failed to comply with the court's order. Disobedience of a court order to provide discovery constitutes an abuse of discovery justifying sanctions. Code Civ. Proc. §§ 2023.010, 2023.030.

Based on the foregoing, Deguzman's answer shall be stricken, and Deguzman's default shall be entered. Code Civ. Proc. § 2023.030(d). Plaintiffs' alternative requests for sanctions are denied.

12. S-CV-0034068 Walsh, Liliya, et al vs. Federal Nat'l Mortgage Ass'n, et al

The Demurrers to Second Amended Complaint, Motions to Strike, and Motion to Expunge Lis Pendens are dropped in light of the notice of removal filed September 15, 2014.

13. S-CV-0034110 Forman, Jared, et al vs. Richmond American Homes

This tentative ruling is issued by the Honorable Charles D. Wachob:

Plaintiffs Alec Mercer, Victoria Mercer, and Harold Thomas are ordered to appear before the court on September 30, 2014 at 8:30 a.m. in Department 42, and show cause, if any, why the court should not adopt the recommendations of the special master in Pre-Trial Order No. 2.

14. S-CV-0034501 Abelar, Michael vs. Performance Motor Works, Inc., et al

Plaintiff's request for judicial notice is granted. Defendants' request for judicial notice is denied, as the subject document bears no relevance to the court's determination of defendants' demurrer.

Defendants' Demurrer to Plaintiff's Verified Amended Complaint is overruled in part, and sustained in part with leave to amend.

As a preliminary matter, defendants did not waive their right to demur to the amended complaint by failing to demur to the original complaint. The demurrer is overruled with respect to plaintiff's second cause of action for breach of oral contract, third cause of action for breach of the implied covenant of good faith and fair dealing, and fourth cause of action for misappropriation of funds. The amended complaint, read as a whole, alleges sufficient factual allegations to support each of these causes of action. It does not appear clearly and affirmatively from the face of the complaint that the statute of limitations wholly bars plaintiff's second and third causes of action, which allege ongoing obligations, as well as breaches caused by the ultimate termination of plaintiff in September 2013. *See Committee for Green Foothills v. Santa Clara County Board of Supervisors* (2010) 48 Cal.4th 32, 42. The fourth cause of action adequately alleges misapplication of funds for an unauthorized purpose.

The demurrer is sustained with leave to amend as to plaintiff's first cause of action for breach of fiduciary duty. This cause of action is rendered uncertain by plaintiff's allegation that the cause of action is brought by plaintiff both in his individual capacity and derivatively on behalf of the corporation. Moreover, the cause of action alleges only harm to the corporation.

Plaintiff shall file any amended complaint by no later than October 14, 2014.

15. S-CV-0034571 David, Edgar P., et al vs. Rolling Greens Estates, LLC, et al

Defendant Rolling Greens Estates, LLC's Demurrer to First Amended Complaint is overruled.

A party may demur to the complaint on the grounds that it is uncertain, or does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e), (f). A demurrer tests the legal sufficiency of the pleadings, not the truth of the allegations. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The first amended complaint, read as a whole, alleges sufficient factual allegations to support the single cause of action for continuing trespass, and is not uncertain or unintelligible.

Defendant shall file and serve its answer to the first amended complaint by no later than October 14, 2014.

Plaintiff's request to strike the demurrer or sanction defendant and its counsel is denied for inadequate meet and confer is denied.

16. S-CV-0034771 Filby, Ann vs. N. Calif. Fertility Medical Center, Inc., et al

The Petition to Compel Arbitration is dropped in light of the parties' stipulation to participate in arbitration and stay pending court proceedings. An OSC re Status of Arbitration is set for April 7, 2015 at 11:30 a.m. in Department 40.

17. S-CV-0034821 Fries, Alan, et al vs. ALAW, et al

Defendants' request for judicial notice is granted.

Defendants California Reconveyance Company, Long Beach Mortgage Company and Deutsche Bank National Trust Company's ("Defendants") Demurrer to Complaint is sustained without leave to amend.

Plaintiffs' first cause of action for wrongful foreclosure fails to state a valid cause of action. Based on documents of which the court takes judicial notice, Defendants were authorized to initiate foreclosure proceedings based on plaintiffs' default. Plaintiffs fail to allege any prejudice caused by purported deficiencies in the foreclosure proceedings. *See Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 94. To the extent this claim is based on a purported violation of Civil Code section 2923.5, it fails because the only remedy provided under that statute is postponement of the sale before it happens. *Mabry v. Superior Court* (2010) 185 Cal.App.4th 208, 224. After foreclosure sale, this statute provides the borrower with no relief. While reference is also made to Civil Code section 2923.6, this statute "merely express the hope that lenders will offer loan modifications on certain terms." *Id.* at 222. It is unclear how this statute relates to plaintiffs' claims herein.

Plaintiffs' third and fourth causes of action for fraud in the concealment and fraud in the inducement fail to state valid causes of action. These claims are not stated with requisite

specificity. When pleading fraud against corporate defendants, plaintiffs must specify the identity of the person who made the misrepresentation, his authority to speak on behalf of the corporation, and when and to whom the representation was made. *Tarmann v. State Farm Mut. Auto Ins. Co.* (1991) 2 Cal.App.4th 153, 157. Plaintiffs fail to allege actionable damages resulting from the purported fraudulent acts or omissions by Defendants. Plaintiffs allege that if the truth of the material terms of the transaction had been disclosed they “could have been alerted to issues of concern”, “would have known of Defendants’ true intentions” and “would have known that the actions of Defendants would have an adverse effect on the value of Plaintiffs’ home”. (Complt., ¶ 81.) However, such allegations do not establish proximate harm.

Plaintiffs’ fifth cause of action for intentional infliction of emotional distress fails to state a valid cause of action. Plaintiffs fail to allege conduct by Defendants that is “so extreme as to exceed all bounds of that usually tolerated in a civilized society.” *Trerice v. Blue Cross of Cal.* (1989) 209 Cal.App.3d 878, 883.

Plaintiffs’ sixth cause of action for slander of title fails to state a valid cause of action. The actions of Defendants alleged to constitute false publications are privileged. Civ. Code §§ 47(c)(1); 2924(d); *Kachlon v. Markowitz* (2008) 168 Cal.App.4th 316, 333. Plaintiffs also fail to allege that any allegedly false publications were motivated by hatred or ill will towards plaintiffs. *Kachlon, supra*, 168 Cal.App.3d at 336.

Plaintiffs’ seventh cause of action for quiet title fails to state a valid cause of action. Plaintiffs have not filed a verified complaint, and do not state a cognizable legal basis for vesting title in themselves. Code Civ. Proc. § 761.020. Plaintiffs must tender full payment of their debt to bring a claim for quiet title. *Mix v. Sodd* (1981) 126 Cal.App.3d 386, 390; *McElroy v. Chase Manhattan Mortgage Corp.* (2005) 134 Cal.App.4th 388, 391-395.

Plaintiffs’ ninth cause of action for rescission fails to state a valid cause of action. Rescission is unavailable unless plaintiffs have tendered to Defendants everything of value received under the contract. Civ. Code § 1691(b); *Fleming v. Kagan* (1961) 189 Cal. App. 2d 791, 796. To the extent this claim is based on the Truth in Lending Act, 15 U.S.C. Section 1601, it is barred by the applicable statute of limitations. *Meyer v. Ameriquet Mortgage Co.*, 342 F.3d 899, 902 (9th. Cir. 2003).

Plaintiffs’ eighth cause of action for declaratory relief fails to state a valid cause of action. This claim is based on allegations of the previous causes of action, and fails for the same reasons set forth above. Finally, plaintiffs’ second cause of action for injunctive relief fails to state a valid cause of action. Injunctive relief is a remedy, not a cause of action. *Marlin v. AIMCO Venezia, LLC* (2007) 154 Cal.App.4th 154, 162. As set forth above, plaintiffs fail to allege any valid claims, and therefore are not entitled to injunctive relief.

Plaintiffs bear the burden of demonstrating how the complaint may be amended to cure the defects therein. *Assoc. of Comm. Org. for Reform Now v. Dept. of Indus. Relations* (1995) 41 Cal.App.4th 298, 302. A demurrer shall be sustained without leave to amend absent a showing by plaintiffs that a reasonable possibility exists that the defects can be cured by amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. The complaint does not suggest on its face that it is

somehow capable of amendment and, as the demurrer is unopposed, plaintiffs have failed to make any showing that it can be amended to change its legal effect. Accordingly, the demurrer is sustained without leave to amend.

18. S-CV-0034915 Graham, Robert vs. Bank of America, N.A.

Defendant Bank of America, N.A.'s request for judicial notice is granted.

Defendant's Demurrer to Complaint is overruled in part, and sustained in part without leave to amend.

The demurrer is overruled with respect to plaintiff's first cause of action for violation of the Homeowners' Bill of Rights, specifically Civil Code section 2923.7. Civil Code section 2923.7 requires that a single point of contact be established by the mortgage servicer upon borrower's request for a foreclosure prevention alternative. The complaint adequately alleges that defendant failed to establish a single point of contact following plaintiff's request for a foreclosure prevention alternative, and adequately alleges damages based on defendant's failure.

The demurrer is also overruled with respect to plaintiff's third cause of action for violation of Business and Professions Code section 17200. When read as a whole, the complaint adequately alleges unfair or unlawful conduct, as well as injury in fact and loss of money or property.

The demurrer is sustained with respect to plaintiff's second cause of action for negligent misrepresentation. Negligent misrepresentation is a species of fraud and the claim must meet the heightened pleading standard of particularity. *Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 173-174; *Cadlo v. Owens-Illinois, Inc.* (2004) 125 Cal.App.4th 513, 519. Plaintiff fails to allege the identity of the persons who made the misrepresentations, their authority to speak on behalf of the corporation, and when and to whom the representations were made. *Tarmann v. State Farm Mut. Auto Ins. Co.* (1991) 2 Cal.App.4th 153, 157.

The demurrer is sustained with respect to plaintiff's fourth cause of action for violation of Civil Code section 2943. By its terms, this section became operative on January 1, 2014. Civ. Code § 2943(g). As the complaint alleges offending conduct that occurred in 2013, plaintiff fails to allege a violation of the statute.

Plaintiff bears the burden of demonstrating how the complaint may be amended to cure the defects therein. *Assoc. of Comm. Org. for Reform Now v. Dept. of Indus. Relations* (1995) 41 Cal.App.4th 298, 302. A demurrer shall be sustained without leave to amend absent a showing by plaintiff that a reasonable possibility exists that the defects can be cured by amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. The complaint does not suggest on its face that it is somehow capable of amendment and, as the demurrer is unopposed, plaintiff has failed to make any showing that it can be amended to change its legal effect. Accordingly, with respect to the second and fourth causes of action, the demurrer is sustained without leave to amend.

Defendant shall file and serve its answer to the complaint by no later than October 14, 2014.

If oral argument is requested, defendant's request for telephonic appearance is granted. All telephonic appearances are governed by Local Rule 20.8.

19. S-CV-0035105 Stanfield, Lauren - In Re the Petition of

The Petition for Approval of Transfer of Structured Settlement Payment Rights is granted.

20. S-PR-0007398 Cortez, Isabel Saez - In Re the Conservatorship of

Appearance required on September 30, 2014 at 8:30 a.m. in Department 40.

These are the tentative rulings for civil law and motion matters set for Tuesday, September 30, 2014, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, September 29, 2014. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.